

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
)	
)	
Ada County, Idaho Request for Waiver)	

ORDER

Adopted: November 14, 2008

Released: November 14, 2008

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing the 700 MHz band.¹ In the *Second Report and Order*, the Commission redesignated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. In order to accommodate this broadband allocation, the Commission consolidated the public safety narrowband channels so that they are located at 769-775/799-805 MHz.² Subject to certain conditions and limitations, the Commission determined that the Upper 700 MHz Band D Block licensee will pay the costs associated with relocating public safety narrowband operations to the consolidated channels.³ To facilitate the relocation process, and clearly define the costs that would be entitled to reimbursement, the Commission required every 700 MHz band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to certify the number of narrowband mobile and portable handsets, and base stations serving these handsets, in operation as of August 30, 2007 (30 days following adoption of the *Second Report and Order*).⁴ The Commission also prohibited authorization, whether pursuant to individual license or State License, of any new narrowband operations outside of the consolidated

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

² *Id.* at 15409 ¶ 329.

³ *Id.* at 15411 ¶ 336.

⁴ *Id.* at 15411 ¶¶ 336-337.

channels as of August 30, 2007, and cautioned that any equipment deployed outside of the consolidated channels after August 30, 2007 would be ineligible for relocation funding.⁵

2. On October 10, 2007, Ada County, Idaho (Ada) requested waiver relief concerning narrowband operations outside of the consolidated channels.⁶ Specifically, Ada requests waiver of the provisions of the *Second Report and Order* prohibiting authorization of new narrowband operations outside the consolidated channels as of August 30, 2007. For the reasons discussed below, we grant the Waiver Request on a limited basis, and defer action on the Waiver Request in all other respects.

II. DISCUSSION

3. As an initial matter, several parties have filed petitions for reconsideration of provisions of the *Second Report and Order*, including the prohibition on authorization of new narrowband operations outside of the consolidated channels following August 30, 2007, and the limitation on cost reimbursement to equipment that was in operation as of August 30, 2007.⁷ In addition, on May 14, 2008, the Commission issued a *Second Further Notice of Proposed Rulemaking*, which sought comment on, among other issues, narrowband relocation, including the petitions for reconsideration of the *Second Report and Order*.⁸ As a follow-up to this *Second Further Notice*, the Commission issued a *Third Further Notice of Proposed Rulemaking* on September 25, 2008, which sought comment on tentative conclusions and proposed rules concerning various 700 MHz public safety spectrum issues, including narrowband relocation.⁹ In the interests of public safety, we provide Ada limited waiver relief of the prohibition on new narrowband operations outside of the consolidated channels after August 30, 2007. As further explained below, the Commission will determine the duration of such relief, and whether Ada is entitled to reimbursement for relocation of equipment installed after August 30, 2007, after fully considering the petitions and associated public record submitted in response to both the *Second Further Notice* and *Third Further Notice*.

4. Section 1.925 states that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest,¹⁰ or the applicant has no reasonable alternative.¹¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹²

5. On November 14, 2007, the Commission adopted and released an Order that granted the

⁵ *Id.* at 15412 ¶ 339.

⁶ Request for Waiver of Commission Rules, filed by Ada County, Idaho, PS Docket No. 06-229 (filed Oct. 10, 2007) (Waiver Request).

⁷ *See, e.g.*, Commonwealth of Virginia, Virginia State Police, Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86 (filed Sept. 24, 2007).

⁸ *See* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8047 (2008) (*Second Further Notice*).

⁹ *See* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, FCC 08-230 (rel. Sept. 25, 2008) (*Third Further Notice*).

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

¹² *See WAIT Radio v. FCC*, 418 F.2d 1153, 1158-59 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Commonwealth of Virginia, Virginia State Police (Virginia) limited interim waiver relief to enable Virginia to continue to deploy new narrowband operations outside of the consolidated narrowband channels.¹³ In this Order, the Commission found that it is in the public interest to “provide interim waiver relief for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed.”¹⁴ We next examine whether Ada satisfies these criteria.

6. In its Waiver Request, Ada makes a general claim of potential public harm should it be unable to continue to deploy additional narrowband operations after August 30, 2007. Ada states that its 700 MHz system was completed in December 2006 and that it has deployed “a 3-site 18-channel P-25 digital simulcast system, a master switch and 1,240 handhelds and base stations.”¹⁵ Ada states it scheduled full deployment of the system two years after system acceptance in order to allow time for state and local agencies to apply for grants and obtain budget funding to enable purchase of subscriber units.¹⁶ Ada argues that it will “undergo significant hardship” without a waiver permitting deployment of remaining equipment.¹⁷ According to Ada, it has invested more than \$10 million to implement the system, which is designed to provide seamless interoperability to all emergency responders in Ada County and to other counties, as well as state and federal agencies.¹⁸ Ada states that it was not possible for it to completely deploy the system by the August 30, 2007 deadline, and has 232 subscriber units on hand but not deployed, as well as 336 handhelds, mobiles and base stations that will be purchased with funding from a 2007 Community Oriented Policing Services (COPS) grant awarded to Boise City.¹⁹ Finally, Ada states that its Waiver Request does not address reimbursement of equipment deployed after August 30, 2007.²⁰

7. We find that Ada has made a sufficient showing of “potential public harm,” based on its representation that its ability to respond to a public safety emergency would be compromised should it be unable to continue to deploy new narrowband operations outside of the consolidated narrowband channels. We also find that Ada has provided sufficient “evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007, for which equipment has been received and/or deployed.” In this respect, although Ada had not received 336 handhelds, mobiles and base stations by August 30, 2007, we permit deployment of this equipment because this equipment had been part of its originally deployment plan and for which Ada had already secured grant funding. Having satisfied the criteria established by the Commission in the *Virginia Order*, we find it to be in the public interest to grant Ada limited interim waiver relief to deploy new narrowband operations outside the consolidated bands after August 30, 2007, until the Commission resolves the outstanding narrowband issues pending in the *Second Further Notice* and *Third Further Notice*. For the same reason, we defer ruling on the continued duration of this limited waiver relief, and whether Ada would be entitled to cost reimbursement for any new

¹³ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, 22 FCC Rcd 20290 (2007) (*Virginia Order*).

¹⁴ *Id.* at 20293 ¶ 7.

¹⁵ Waiver Request at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 1, n.3, 6. Ada County states that it recognizes that new equipment will not be eligible for relocation funding, but its waiver request should not be seen as prejudicing any future motions opposing the policy for relocation funding.

narrowband operations deployed following August 30, 2007, until the Commission rules on the outstanding petitions.

8. Our decision to permit Ada to continue to place new narrowband radios into operation after August 30, 2007 is without prejudice to the Commission's subsequent ruling on these outstanding waiver issues – including whether Ada would be entitled to reimbursement for the costs associated with relocating any additional narrowband operations outside of the consolidated narrowband channels that Ada deploys after August 30, 2007. To the extent, however, that Ada is able to deploy in the consolidated bands and avoid the need for relocation, we encourage it to do so. Such deployment would eliminate any future disruptions to operations due to the need to relocate, and would reduce the overall cost of the relocation process.²¹

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, THIS ORDER in PS Docket No. 06-229 and WT Docket No. 96-86 is ADOPTED.

10. IT IS FURTHER ORDERED that the Waiver Request filed by Ada County, Idaho, on October 10, 2007 is GRANTED to the extent discussed herein, and that action on the Waiver Request is DEFERRED IN ALL OTHER RESPECTS.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek K. Poarch
Chief
Public Safety and Homeland Security Bureau

²¹ To the extent that waiver of any Commission rules would be required to enable immediate deployment in the consolidated bands, such requests may be filed in accordance with the Commission's waiver rules, 47 C.F.R. § 1.925. We also note that public safety entities in need of commencing operations in advance of Commission approval of a 700 MHz regional plan should file a request for Special Temporary Authority. See Public Safety and Homeland Security Bureau Reminds 700 MHz Regional Planning Committees of the January 31, 2008 Deadline to Amend 700 MHz Narrowband Plans and Provides Further Guidance, *Public Notice*, 22 FCC Rcd 21889, 21892 (PSHSB 2007).